



Motorcycle Industry Council
Government Relations Office

DEPT. OF TRANSPORTATION
MAR 23 2001

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March 23, 2001

Docket Management
Room PL-401
400 Seventh Street, SW
Washington, DC 20590

Re: Docket No. NHTSA 2001-8677; Notice 1 — 29

The Motorcycle Industry Council (MIC) is the national nonprofit trade association representing the manufacturers and distributors of motorcycles, their parts and accessories, and members of allied trades. On behalf of our over 300 member companies, we are pleased to offer the following comments and recommendations, where possible and appropriate, to the Agency's Advance Notice of Proposed Rulemaking on "early warning reporting requirements" under the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

The Act was Congress's response to a very significant and unfortunate series of events that related to the automotive industry, its products and their use. The motorcycle industry finds itself in a situation where we are being asked to comment on, provide recommendations to and ultimately comply with a regulation designed to address a specific problem with one automobile manufacturer and its tire supplier. This is self-evident in the issues discussed and the terms used throughout the advance notice.

MIC understands the importance of this issue and obviously its members will comply with the regulations when promulgated. However, we also believe it equally important for the Agency to recognize the vast differences between the automotive and motorcycle industries and take those differences into account while developing the regulation. These differences go to manufacturer/distributor size, financial and personnel resources, dealer bodies and their relative size and sophistication, vendor/suppliers, offshore relationships, numbers of vehicles and component systems in the market place and the history of product recalls, among others. These differences even extend to those corporations who have both auto and motorcycle product lines, which typically are structurally separated within the corporation.

The MIC strongly urges that NHTSA separate out the motorcycle industry, at least initially, from the scope and magnitude of this proposal. The Agency, in its discussion of reporting, recognizes that it is going to be a tremendous undertaking for both the Agency and the regulated industry to sort through this and make it work and recommends that NHTSA take an incremental approach. For example, NHTSA suggested initially requiring reports on only certain equipment items which were specifically highlighted in the ANPRM. These items were identified on the basis of safety related defects reported in the past five years. The items suggested are tires, child restraints, fuel tanks, and airbags, with seat belt assemblies being an additional item singled out. Only two of these categories relate in some way to motorcycles. MIC supports this concept as being appropriate not only for the process generally but for certain vehicle

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and equipment manufacturers and distributors as well. In this regard we ask that a motorcycle specific rule or subset be proposed but that it be deferred until rulemaking for cars and trucks is in place, functioning at some level of usefulness to NHTSA, and found to be within the ability of the regulated entities to properly comply. In any case, NHTSA must determine the appropriate safety-related systems specific to motorcycles on which reporting would be merited, since the ANPRM focuses on automobiles and lacks the necessary consideration of issues unique to motorcycles.

The following comments address specific questions raised by NHTSA in the ANPRM where possible and hopefully will demonstrate the need for separate consideration as suggested above.

- Who should report?

Reporting should only be required of original equipment manufacturers and importers. The motorcycle industry, in addition to the OEMs, is made up of a large number of aftermarket manufacturers and distributors who are domestic producers or importers of foreign-made products. These are generally small businesses that sell essentially every motorcycle component into the U.S. market. Some are OEM suppliers, however, a significant number have little or no relationship with an OEM. If an aftermarket component on a modified vehicle is the suspected cause of a reportable safety-related problem, it raises a significant question as to who is responsible for the reporting. This is not clearly addressed. It also should be noted that the manufacturer/distributor or importer of a motorcycle helmet, as referenced in the discussion, would apparently be required to report directly to NHTSA, as this is not installed equipment and the vehicle manufacturer would have little information on a causal event. Helmet manufacturers are essentially all located offshore. A similar circumstance would exist for the manufacturer/distributor or importer of motorcycle tires.

If information is required from the foreign parent of a U.S. subsidiary, NHTSA should require that all information be provided through the domestic entity. The matter of translation, which may occur on either end, will always incur some measure of delay. In-house translation capability most likely will not be available in the case of the aftermarket supplier cited above.

- What should be reported?

- a. Warranty claim data.

Warranty data may be somewhat useful, however, we don't believe it will be as valuable as the Agency contemplates. Warranties vary from product to product, company to company and country to country in terms of components covered and warranty period. Also, motorcycle warranties are vastly different in scope and length of time from those for cars. We do not agree that standardization of warranty codes among manufacturers is either a reasonable or viable concept. Such standardization would be extremely costly, tremendously complex and most likely not meet the unique needs of any particular manufacturer. Warranty claims will only provide data for relatively new products and will include a significant number of non-verified and non-safety related complaints. Warranty programs, to a certain extent, are marketing driven, structured much as an accounting system to reimburse dealers for warranty work and are routinely audited for fraudulent claims. They are not specifically designed to produce credible technical or safety related data and therefore not of value as an early warning mechanism. Also, we do not agree that the California Air Resources Board warranty reporting regulations should be used as a model for the instant rule. To our knowledge, reporting to the CARB has not been the sole determining factor in any motorcycle recall.

Shortcomings in warranty claims as an early warning data source should suggest that the Agency proceed cautiously and on a limited basis if this reporting is to be required. Claims reports should be aggregated

to include only those serviced by the U.S. entity and only relate to previously determined major systems or components with thresholds established for each. These systems and/or components will obviously be somewhat different for motorcycles than for cars and would argue for different reporting requirements. Reporting of warranty claims should only include numerical counts. This would give NHTSA an indication of the size of a potential problem and the ability to compare the data from reporting period to reporting period. If at some point the Agency believes there to be a problem, it could then ask for detailed warranty information, as is the current practice. Reporting by numerical counts should be considered for the majority of the reportable elements on a cost benefit basis.

b. Claims for serious injury or death.

These claims when initially received by the manufacturer tend to be sketchy and inconclusive with regard to whether a defect in a particular system or component either existed or contributed. Therefore, specificity is essential to insure that an actual defect in a system or component is identified before a report is generated. Reporting in this category should be narrowed and limited only to include those verifiable claims, initially for occurrences within the U.S., on a numerical count basis. In addition, reporting should only apply to foreign sources based on regulatory criteria that the Agency may develop after it has more experience dealing with the automotive industry reporting regulation. Similarly, a threshold for serious injury reporting should be established and narrowly defined. Although NHTSA recommends that the threshold should include AIS 3 or more, we suggest a more definitive criteria for grievous bodily injury such as that established by the U.S. Consumer Product Safety Commission pursuant to Sec. 37 of the Consumer Product Safety Act, at 1116.2. We further recommend the criteria for reporting grievous bodily injury or death of three adverse verdicts or settlements [for the same system or component] occurring within a 24-month period, found at 1116.3 and 1116.5.

NHTSA's existing primary data systems, the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES) should be considered as a source for this type of data. This would avoid unnecessary duplication in reporting.

c. Property damage claims.

"Property damage" needs clarification. The scope should be limited to occurrences within the U.S. and to major property damage only. MIC recommends that a specific monetary threshold of \$2,000 be established. The reporting of events such as the tipping over of a parked motorcycle due the side stand being placed on soft asphalt should not be reported as they will only serve to clutter up NHTSA's system.

d. Field reports.

The Agency needs to further define "field reports" and narrow the scope, particularly with regard to dealer communications. Field reports should be limited to those formal written communications made by persons employed by the manufacturer/distributor or importer.

Motorcycle dealerships are small businesses employing an average of 13 persons, some of whom are part time. Most are dual or multi-brand franchisees and as a result need considerable assistance from their manufacturers. They are in constant communication with company dealer support services with questions regarding vehicle parts and accessories and maintenance and repair problems. The bulk of these communications are informal and not reduced to writing. To require reporting of this nature would impose a significant burden on the dealer as well as on the manufacturer and only contribute further to the overload of questionable data NHTSA might well receive. Therefore, we do not believe that field reports from motorcycle dealers should be required.

e. Consumer complaints.

Reporting of consumer complaints should not be required due to the large volume and the need to evaluate them as material to the purpose of the rule unless the Agency contemplates receiving all such communications. The bulk of consumer complaints are just that, complaints, and experience shows that this information is often media-driven and unreliable as it relates to proving that a component is defective. NHTSA currently has a very successful "consumer hot line" program that should satisfy this requirement without further burdensome duplication.

f. Consumer satisfaction campaigns.

Reporting should be limited to campaigns conducted by the manufacturer or its wholly owned subsidiary distributor and should be narrowed to cover certain significant components or systems which again will be different for motorcycles. The tentative plan to require the routine submission of background information regarding the facts and analysis that led to the decision to issue a communication, in addition to the communication itself, should be reconsidered. This would be extremely burdensome by requiring extensive record keeping over long periods of time that would focus on the ultimate production of one piece of paper and entail continuous legal and peer review. Rather, NHTSA should review all such communications, to include service bulletins which the Agency currently receives, and request, under existing authority, that relevant "facts and analysis" type information be produced on a case-by-case basis as necessary.

g. Internal investigations.

An internal investigation is internal by definition and if a true investigation, it would consist of some level of formal inquiry that would be triggered by events that will have occurred over a period of time. Investigations of this nature typically include privileged and confidential information. A true investigation would not be "early warning" but rather the culmination of preceding events. If this information is to be required, what constitutes an internal investigation must be clearly defined as to scope and time-certain triggering. We don't believe this area lends itself to the requisite specificity and therefore should not be included in reporting requirements.

h. Design changes.

MIC believes that a requirement to submit design changes accompanied by explanations and justification will provide the Agency with only a modicum of useful information. There are a multitude of changes that occur either on a running basis or as one time events and for various reasons, i.e. an engine modification for enhanced performance, restyled fender or trim for consumer appeal, catalytic converter for regulatory compliance or license plate mounting brackets to comply with state law. The vast majority of these changes have no safety implications whatsoever. For example, a change to a label or placard or to the owner's manual requires an engineering drawing and part number and would constitute a design change. The value-burden relationship does not support routine reporting of this nature. There is nothing to preclude NHTSA from seeking design-related information as appropriate and necessary.

i. Remedy failures.

Remedy failure does not seem to fit into an "early warning" reporting scheme. Also, it isn't clear from the ANPRM if the focus is on a second recall or repeated repair attempts. Repeated repair attempts generally can be attributed to dealership's service department. Information on second recalls is already provided to the Agency. We don't believe this type of information is sufficiently important or useful to be reported under TREAD, particularly due to its lack of early warning value.

j. Fuel leaks, fires and rollovers.

Fuel leaks and fires involving motorcycles are significantly different in character than those occurring in cars. Since there is no closed compartment, fuel leaking from a parked motorcycle is visually detectable and it is rapidly dispersed when the vehicle is in operation. If the motorcycle is involved in fire it generally is the result of a crash, rather than a contributing factor, and the motorcycle operator is typically separated from the vehicle in the event of a crash. Thermal events could be included as discussed, however, a fire involving a motorcycle is far less likely to occur and poses less of a threat to the operator than with cars. Automobile fires may occur as a result of fuel leaks under the hood as well as from crash involvement and can be catastrophic. Similarly, motorcycle rollovers are the result of a crash rather than a cause. Motorcycle rollovers are often not the same as automobile rollovers. A crash-involved motorcycle will almost always experience a ninety-degree rotation around its longitudinal axis. A static motorcycle can also be tipped over in the parking lot. We don't believe separate reporting of information in these categories is necessary or useful for motorcycles.

- Cut-off dates.

Cut-off dates for reporting should be specified and consistent with existing statutory, regulatory and record retention requirements, but not to exceed five years. We believe NHTSA should set some periodic frequency, such as quarterly or semi-annually, for the bulk of reporting. Certain reporting would need to be episodic, and some perhaps monthly, while the remainder could be submitted on an annual basis. It will be important to the process that the frequency of reporting be scheduled to reflect the real value of the data required and the ability to produce it within the established time frame. It cannot all be done at once.

- Information use.

We would expect the Agency to exercise the same degree of care in the use of information provided under TREAD as is its current practice. There clearly will be issues of confidentiality and privacy associated with reporting of this magnitude. A significant amount of the information and data produced under this program obviously will be of great interest to many outside the Agency and the regulated industry. Therefore, it could be used in a misleading and unfair manner by third parties if it is not properly protected under NHTSA's statutory and regulatory authority applicable to such information.

In summary, the MIC recommends that the Agency adopt an incremental approach to reporting, beginning with the most critical issues, to assess what works, or if it doesn't how to improve the process. This also would control the level of burden on the industry and on the Agency to help determine whether what is being reported is indeed useful rather than reporting for reporting sake. If the whole of what is discussed in the ANPRM is imposed all at once it would overwhelm the process. This early warning reporting system should incorporate the Agency's existing defect investigation program rather than duplicate or supplant it. Part 553 provides for the Agency to periodically review a rule to revise or amend provisions thereof. This would facilitate an incremental approach and the Agency should proceed in this regard.

Definitional precision is essential. If too much subjectivity or room for interpretation exists it might have the unintended consequence of producing over reporting or unnecessary reporting due to the criminal sanctions provisions of the Act. This could further overload resources.

A large commitment to new information technology resources will be required at all levels of participation. Computer hardware capability and software design are issues as are uniform reporting formats and compatibility within the companies and between the companies and the Agency. As important as automation will be to this program, many facets will still require human expertise and judgment if the best product is to result. This will mean more personnel dedicated to the effort. At this juncture it is not possible to assess the cost burden but it will be high. It is our belief that this regulation will be of a magnitude that should require the Agency to consider it as "significant" under DOT Regulatory Policies and Procedures and be subject to review under Executive Order 12866. The important task facing the industry and NHTSA is to work together to produce a viable program that fulfills the intent of the Congress without it being "unduly burdensome."

We urge you to be mindful during the rulemaking process of the inherent differences between motorcycles and other motor vehicles and between the industries themselves in terms of size. We ask that the Agency proceed slowly and carefully in imposing a massive regulatory scheme on the motorcycle industry, when the focus of the rulemaking is to address automobile-related problems.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy R. Van Kleeck", with a stylized flourish at the end.

Kathy R. Van Kleeck
Vice President
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